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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/625,097	07/22/2003	Brian Teixeira	PM0253	8768
7590	11/13/2006		EXAMINER	
Amersham Health, Inc. IP Department 101 Carnegie Center Princeton, NJ 08540			TRAN, KHOI H	
			ART UNIT	PAPER NUMBER
			3651	

DATE MAILED: 11/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/625,097	TEIXEIRA, BRIAN	
	Examiner	Art Unit	
	Khoi H. Tran	3651	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

- 1) Responsive to communication(s) filed on 04 October 2006.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

- 4) Claim(s) 1-73 is/are pending in the application.
- 4a) Of the above claim(s) 1-61 is/are withdrawn from consideration.
- 5) Claim(s) 62-66 and 70-73 is/are allowed.
- 6) Claim(s) 67 and 68 is/are rejected.
- 7) Claim(s) 69 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

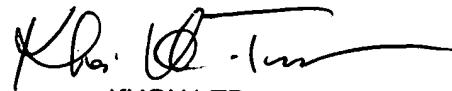
#### **Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.



**KHOI H. TRAN**  
**PRIMARY EXAMINER**

#### **Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 67 and 68 are rejected under 35 U.S.C. 102(b) as being anticipated by Rosen et al. 6,085,743.

Rosen et al. '743 disclose a computer program product for operating a hyperpolarized gas dispensing system per claimed invention. The system comprises a source of hyperpolarized gas and a source of buffer gas. The system comprises a plurality of spaced apart remote-controlled actuated valves that open and close to direct the flow of the hyperpolarized and the buffer gas therein and to close off at least one intermediate portion of the gas flow path having a known volume. The at least one intermediate portion being in selectable communication with the sources of hyperpolarized gas and buffer gas. The computer program product comprises a computer readable storage medium having computer readable program code. The code comprises code that automatically computer readable program code that automatically transmits control signals to predetermined ones of the remote actuated valves 50, 72, 92,98 (Figure 1) during operation of the dispensing system to cause selected valves to open and/or close at appropriate times so as to selectively temporarily close off at least one predetermined intermediate portion of the gas flow

path having a known volume from the remainder of the gas flow path to capture a discrete amount of hyperpolarized gas or buffer gas therein and to then rapidly open to release the captured discrete amount of hyperpolarized gas or buffer gas therefrom.

Rosen et al. '743 intermediate portion comprises first and second intermediate portions having different first and second volumes (Figure 1, portion between valves 50 and 70, and portion between valves 92 and 98). Rosen et al. '743 comprises code that automatically determines and selects the appropriate combination of the first and second intermediate portions to output the desired aliquot amounts of buffer and hyperpolarized gas.

***Allowable Subject Matter***

3. Claims 62-66 and 70-73 are allowable over the prior arts of record.
4. Claim 69 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

5. Applicant's arguments filed 10/04/2006 have been fully considered but they are not persuasive. Applicant argued that Rosen et al. 6,085,743 does not teach that any additional buffer gas is added to the hyperpolarized gas in the claimed intermediate portion. This argument has not been found to be persuasive and is not supported by the claimed language. According to the language of the claim, it is only required that the intermediate portion is in selectable communication with the sources of hyperpolarized and buffer gases. From Rosen et al. '743 system in figure 1, the

intermediate portion between valves 92 and 98 is in selectable communication with the sources of hyperpolarized and buffer gases. The distinction of the hyperpolarized and the buffer gases being introduced together in the intermediate portion is not presented in the claim language, as argued by Applicant.

***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoi H. Tran whose telephone number is (571) 272-6919. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Crawford can be reached on (571) 272-6911. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Khoi H Tran  
Primary Examiner  
Art Unit 3651

KHT  
11/09/2006

